

**THE HONORABLE BRIAN D. LYNCH
CHAPTER 13
LOCATION: Tacoma, WA**

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re:) NO. 17-42850-BDL
STEPHEN JON CAREAGA and)
LISA ANN CAREAGA,)
)
Debtor.)
)
STEPHEN JON CAREAGA and)
LISA ANN CAREAGA,)
)
)
Plaintiff,) ADVERSARY COMPLAINT SEEKING
) TO AVOID LIEN
vs.)
)
THE BANK OF NEW YORK MELLON,)
)
Defendant.)

Plaintiffs allege:

1.

This adversary proceeding arises out of the Plaintiffs' Chapter 13 case now pending before this Court bearing case number 17-42850-BDL. This Court has jurisdiction to consider the matters herein, pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506 and 1322. This is a core proceeding under 28 U.S.C. § 157 (b) (2) (A), (B), (K), and (O).

2

Plaintiffs reside in Gig Harbor, Washington.

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3.

Defendant The Bank of New York Mellon is a banking entity utilizing Specialized
Loan Servicing as servicer of Debtors' mortgage obligation. Defendant The Bank of New
York Mellon is owed money and is holder of Debtor's mortgage obligation.

4.

Plaintiffs are the owners and residents of a parcel of real estate located in Pierce County, Washington, commonly described as 7235 North Creek Loop, Gig Harbor, Pierce County, Washington, 98335 legally described as:

LOT 13, THE ESTATES OF GIG HARBOR, #2003033150003 PIERCE COUNTY WASHINGTON

APN: 40022000130

5.

Prior to filing of the bankruptcy case, Plaintiffs executed a Deed of Trust in favor of the Defendant, or Defendant's predecessor, evidencing a loan by the Defendant or Defendant's predecessor. Such Deed of Trust was recorded against Plaintiff's residence in Pierce County, Washington real estate records. On the date of filing of Plaintiff's Chapter 13 Petition (July 27, 2017), Plaintiffs were indebted to Defendant under such instrument in the sum of approximately \$253,200.25 per Defendant's Proof of Claim.

6.

On the date of filing of Plaintiff's Chapter 13 Petition, the value of Plaintiff's real property referenced above was \$630,000 per Plaintiff's Schedule A. On that date, the debt owing to senior lienholder, Nationstar Mortgage, totaled \$679,157.79. Unavoidable liens senior to Defendant's total \$679,157.79.

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7.

No equity in Plaintiff's real property exists to which Defendant's lien can attach. Therefore, pursuant to 11 U.S.C. §§ 506 and 1322, and *In Re Zimmer*, 313 F.3d 1220 (9th Cir. 2002), Plaintiff is entitled to "strip off" the lien held by Defendant so that such lien becomes voided and no longer remains a lien against Plaintiff's real property.

WHEREFORE, Plaintiff prays for judgment voiding Defendant's lien against her residential real property to be effective upon completion of their Chapter 13 plan, for allowance of a general unsecured claim to Defendant in the amount of \$253,200.25, and for such other and further relief as this Court might deem just and equitable.

Respectfully submitted this 20th day of December, 2017.

/s/ Kathleen Shoemaker
JAMES F. DART, WSBA #16168
KATHLEEN V. SHOEMAKER, WSBA #27358
Attorneys for Debtors/Plaintiffs

PLAINTIFF'S CERTIFICATION

I, Stephen J. Careaga, Plaintiff in this matter, have read the foregoing Complaint and hereby certify to the best of my knowledge and ability under penalty of perjury that the facts contained therein are true and accurate.

SWORN to this 26th day of December, 2017 at Gig Harbor, Washington.

/s/ Stephen Careaga
Stephen J. Careaga, Plaintiff/Debtor

I, Lisa A. Careaga, Plaintiff in this matter, have read the foregoing Complaint and hereby certify to the best of my knowledge and ability under penalty of perjury that the facts contained therein are true and accurate.

SWORN to this 26th day of December, 2017 at Gig Harbor, Washington.

/s/ Lisa Careaga

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